

1 **ORDERLY SCHOOL TERMINATION ACT**

2 **AMENDMENTS**

3 2007 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Bradley G. Last**

6 Senate Sponsor: John W. Hickman

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies procedures for the termination or discontinuation of a career
11 employees's contract.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends definitions;
- 15 ▶ amends procedures for the termination or discontinuation of a career employees's
- 16 contract; and
- 17 ▶ makes technical corrections.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **53A-8-102**, as last amended by Chapter 299, Laws of Utah 2006

25 **53A-8-104**, as last amended by Chapter 299, Laws of Utah 2006

26

27 *Be it enacted by the Legislature of the state of Utah:*

28 Section 1. Section **53A-8-102** is amended to read:

29 **53A-8-102. Definitions.**

30 As used in this chapter:

31 ~~[(1) "Administrative disciplinary action" means any written statement provided to the~~
32 ~~school employee, signed by a school or district administrator, and retained in the employee's~~
33 ~~personnel file evidencing the employee's willful or intentional misconduct as defined in~~
34 ~~Subsection (10).]~~

35 ~~[(2)]~~ (1) "Career employee" means an employee of a school district who has obtained a
36 reasonable expectation of continued employment based upon Section 53A-8-106 and an
37 agreement with the employee or the employee's association, district practice, or policy.

38 ~~[(3)]~~ (2) "Contract term" or "term of employment" means the period of time during
39 which an employee is engaged by the school district under a contract of employment, whether
40 oral or written.

41 ~~[(4)]~~ (3) "Dismissal" or "termination" means:

42 (a) termination of the status of employment of an employee;

43 (b) failure to renew or continue the employment contract of a career employee beyond
44 the then-current school year;

45 (c) reduction in salary of an employee not generally applied to all employees of the
46 same category employed by the school district during the employee's contract term; or

47 (d) change of assignment of an employee with an accompanying reduction in pay,
48 unless the assignment change and salary reduction are agreed to in writing.

49 ~~[(5)]~~ (4) "Employee" means a career or provisional employee of a school district, but
50 does not include:

51 (a) the district superintendent, or the equivalent at the Schools for the Deaf and the
52 Blind;

53 (b) the district business administrator or the equivalent at the Schools for the Deaf and
54 the Blind; or

55 (c) a temporary employee.

56 ~~[(6)]~~ (5) "Provisional employee" means an individual, other than a career employee or
57 a temporary employee, who is employed by a school district.

58 ~~[(7)]~~ (6) "School board" or "board" means a district school board or its equivalent at
59 the Schools for the Deaf and the Blind.

60 ~~[(8)]~~ (7) "School district" or "district" means:

61 (a) a public school district; or

62 (b) the Schools for the Deaf and the Blind.

63 ~~[(9)]~~ (8) "Temporary employee" means an individual who is employed on a temporary
64 basis as defined by policies adopted by the local board of education. If the class of employees
65 in question is represented by an employee organization recognized by the local board, the board
66 shall adopt its policies based upon an agreement with that organization. Temporary employees
67 serve at will and have no expectation of continued employment.

68 ~~[(10) "Willful or intentional misconduct" means conduct that jeopardizes the health or
69 safety of students or conduct that significantly impairs the employee's ability to safely or
70 professionally fulfill the employee's responsibilities or assignments.]~~

71 Section 2. Section **53A-8-104** is amended to read:

72 **53A-8-104. Dismissal procedures.**

73 (1) ~~[(a)]~~ The district shall provide employees with a written statement of [~~employee
74 misconduct and incompetence~~] causes under which a career employee's contract may not be
75 renewed or continued beyond the then-current school year, under which a contract of each class
76 of personnel may not be renewed or continued beyond the then-current school year, and under
77 which a contract can be otherwise terminated during the contract term, and the orderly
78 dismissal procedures which are used by the district in cases of contract termination,
79 discontinuance, or nonrenewal.

80 ~~[(b) The statement shall include unsatisfactory performance and willful or intentional
81 misconduct for which specific employment actions may be taken.]~~

82 (2) (a) If the district intends to terminate a contract during its term or discontinue a
83 career employee's contract beyond the then current school year for reasons of unsatisfactory
84 performance, the unsatisfactory performance must be documented in at least two evaluations
85 conducted at any time within the preceding three years in accordance with district policies or

86 practices.

87 (b) The district shall notify a career employee, at least 30 days prior to issuing notice of
88 intent not to renew or continue the employee's contract beyond the then-current school year,
89 that continued employment is in question and the reasons for the anticipated nonrenewal or
90 discontinuance.

91 (c) The board shall give the career employee an opportunity to correct the problem in
92 accordance with the district evaluation policies.

93 (d) The board may grant the career employee assistance to correct the deficiencies,
94 including informal conferences and the services of school personnel within the district
95 consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b).

96 (3) (a) If the career employee does not correct the problem as determined in accordance
97 with the evaluation and personnel policies of the district and the district intends to not renew or
98 discontinue the contract of employment of a career employee at the end of the then-current
99 school year, it shall give notice of that intention to the employee.

100 (b) The district shall issue the notice at least 30 days before the end of the career
101 employee's contract term.

102 ~~[(4) (a) If the district intends to terminate a contract during its term or discontinue a~~
103 ~~career employee's contract beyond the then-current school year for willful or intentional~~
104 ~~misconduct, the willful or intentional misconduct shall be documented in at least one~~
105 ~~administrative disciplinary action taken at any time within the preceding two years in~~
106 ~~accordance with district policies or practices.]~~

107 ~~[(b) The district shall notify a career employee, at least 30 days before the anticipated~~
108 ~~termination date, if the employee has not remedied or cannot remedy, based on the district's~~
109 ~~determination, the misconduct.]~~

110 ~~[(c) The district may provide the career employee assistance to remedy the misconduct,~~
111 ~~including informal conferences and the services of school personnel within the district~~
112 ~~consistent with Subsections 53a-1a-104(7) and 53A-6-102(2)(a) and (b).]~~

113 ~~[(d) The career employee shall have the opportunity to appeal the termination within 30~~

114 ~~days of the termination date consistent with local board policies and practice.]~~

115 ~~[(5)]~~ (4) A district shall notify a provisional employee at least 60 days before the end of
116 the provisional employee's contract if the employee will not be offered a contract for a
117 subsequent term of employment.

118 ~~[(6)]~~ (5) In the absence of a notice, an employee is considered employed for the next
119 contract term with a salary based upon the salary schedule applicable to the class of employee
120 into which the individual falls.

121 ~~[(7)]~~ (6) If the district intends to not renew or discontinue the contract of a career
122 employee or to terminate a career or provisional employee's contract during the contract term:

123 (a) the district shall give written notice of the intent to the employee;

124 (b) the notice shall be served by personal delivery or by certified mail addressed to the
125 individual's last-known address as shown on the records of the district;

126 (c) except as provided under Subsection (3)(b), the district shall give notice at least
127 ~~[15]~~ 30 days prior to the proposed date of termination;

128 (d) the notice shall state the date of termination and the detailed reasons for
129 termination;

130 (e) the notice shall advise the individual that he has a right to a fair hearing and that the
131 hearing is waived if it is not requested within 15 days after the notice of termination was either
132 personally delivered or mailed to the individual's most recent address shown on the district's
133 personnel records; and

134 (f) the notice shall state that failure of the employee to request a hearing in accordance
135 with procedures set forth in the notice constitutes a waiver of that right and that the district may
136 then proceed with termination without further notice.

137 ~~[(8)]~~ (7) The procedure under which a contract is terminated during its term may
138 include a provision under which the active service of the employee is suspended pending a
139 hearing if it appears that the continued employment of the individual may be harmful to
140 students or to the district.

141 ~~[(9)]~~ (8) (a) Suspension pending a hearing may be without pay if an authorized

142 representative of the district determines, after providing the employee with an opportunity for
143 an informal conference to discuss the allegations, that it is more likely than not that the
144 allegations against the employee are true and will result in termination.

145 (b) If termination is not subsequently ordered, the employee shall receive back pay for
146 the period of suspension without pay.

147 [~~(10)~~] (9) The procedure shall provide for a written notice of suspension or final
148 termination including findings of fact upon which the action is based if the suspension or
149 termination is for cause.